

## **REMARKS**

### *Introduction*

By this Amendment, claims 26-30 and 56-58 have been amended, and claim 59 has been added. Since claims 1-25 and 31-55 were previously canceled, after entry of this Amendment, claims 26-30 and 56-59 remain pending in this application. Support for the amendments can be found in the originally-filed specification, claims, and drawings, and in the corresponding written description. No new matter is presented.

Initially, Applicant thanks Examiner Hoekstra for the courtesies extended during the telephone conversation with Applicant's undersigned representative on August 8, 2011, during which proposed claim amendments to independent claim 26 were discussed. During that conversation, Examiner Hoekstra indicated that amending claim 26 to include the "device" recitation in the body of the claim appeared to obviate the claim rejection in the outstanding Final Office Action. Examiner Hoekstra also suggested that reciting a medical aspect of the device might place the claims in condition for allowance. In light of these suggestions, Applicant has amended independent claim 26 to recite "[a] rigidizable medical device" comprising, *inter alia*, "an inner element of the device and an outer element of the device . . . ."

Applicant also has amended the dependent claims to include the language "medical device," to provide consistency in claim language throughout the claims. Additionally, new dependent claim 59 has been added.

### *Claim Rejections – 35 U.S.C. § 102(e) in view of Intoccia*

In the Final Office Action at page 2, claims 26-30 and 56-58 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. U.S.

2003/0229332 to Intoccia ("the Intoccia reference"). Claim 26 is the sole independent claim, and, as amended, is now directed to "a rigidizable medical device" comprising, *inter alia*, "an inner element of the device and an outer element of the device positioned concentrically around the inner element " and "a plurality of components positioned between the inner and outer elements."

The Intoccia reference relates to devices and methods for removing an object from a body lumen. With reference to FIGS. 3-5 and paragraphs [0031]-[0036], [0050], and [0051], on which the Examiner relies in the Final Office Action, the Intoccia reference discloses a device 30 having a first catheter 32 and a second catheter 36. The first catheter 32 includes a fluid lumen 33 for delivering fluid to a body lumen (defined by a duct 15), and a lumen 34 for delivering fluid to a distal expansible member 31 (e.g. a balloon 31). The second catheter 36 includes a lumen 37 for delivering fluid to a proximal expansible member 38 (e.g., a balloon 38). See Intoccia paragraphs [0031]-[0033]. In use, the device 30 is inserted into a body duct 15 and the proximal balloon 38 and distal balloon 31 are expanded against the wall of the body duct 15 to secure the position of the first catheter 32 within the duct 15.

In citing the Intoccia reference against claim 26, the Examiner equates the catheter 32 to Applicant's claimed inner element; the body lumen duct 15 to Applicant's claimed outer element; and members 31, 38 and catheter 36 to Applicant's claimed components. See Final Office Action at page 2.

As discussed in the May 9, 2011 Amendment, Applicant continues to disagree with the Examiner's attempted correlation of the patient's body duct 15 to the "outer element" recited in claim 26. In particular, Applicant submits that the body duct 15

cannot be properly construed as a part of a "rigidizable device," as the preamble of claim 26 previously recited. And, since the recitation "rigidizable device" clarifies the statutory class of the claim as relating to an apparatus, Applicant disagrees with the Examiner's refusal to give the recitation patentable weight. See Final Office Action at page 5. Nevertheless, to expedite prosecution, Applicant has further amended claim 26 to recite "device" in the body of the claim, as set forth above.

Applicant submits that the body duct 15 of the Intoccia reference is not an "outer element of [a rigidizable medical] device," as set forth in amended claim 26.

For at least the reasons set forth above, Applicant submits that after entry of this Amendment, all of the currently pending claims are allowable over the art cited in the Final Office Action and the outstanding claim rejections should therefore be withdrawn.

Applicant submits that the amendments to the claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, but merely serve to clarify elements in the claims that have already been considered. Accordingly, Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner placing the pending claims in condition for allowance. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicant submits that entry of this amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

Applicant does not necessarily agree with the various characterizations and/or assertions regarding Applicant's claims and the cited art that are set forth in the Final

Office Action. Unless expressly stated otherwise herein, Applicant declines to subscribe to any such characterizations and/or assertions, and silence regarding the same should not be construed as acquiescence to those characterization and/or assertions.

Please grant any extensions of time required to enter this Amendment and charge any required fees to Deposit Account No. 50-3404.

Respectfully submitted,

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